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## **REMARKS**

### **Claim Amendments**

In the claims, claims 1-25 have been rejected. The Applicants have canceled claims 8, 10, 16, and 20 and have amended claims 1, 2, 7, 9, 11, 12, 17, and 21-25.

### **Claim Rejections**

Claims 1-2, 7-12, and 16-25 stand rejected under 35 U.S. § 102(b) as being anticipated by Suddaby (U.S. Pat. No. 6,332,895, "*Suddaby I*"). In addition, claims 3-5 and 13-15 stand rejected under 35 U.S. § 103(a) as being obvious in view of *Suddaby I*. Claims 8, 10, 16, and 20 are canceled rendering their rejection moot. Applicants respectfully submit that *Suddaby I* does not teach, disclose, or suggest the following features:

- An "internal member includ[ing] a flexible region extending along a length of the internal member permitting flexure of the interlocking teeth structure" as recited in claim 1.
- A slot "extending from the first end to the second end of the internal member to form a flexible region within the internal member permitting flexure of the first wall of the internal member with respect to the base of the internal member" as recited in claim 2.
- A "pair of slots extending along the length of the internal member, each of the slots defining a flexible region in the internal member positioned adjacent the slot and between the internal base wall and one of the first and second internal walls to permit lateral displacement of the first and second internal walls" as recited in claim 12.
- "[A]rcuate slots positioned adjacent the walls extending along the length of the second member to define a flexible region between each of the walls and the second base portion" as recited in claim 17.

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Support for the feature of a flexible region can be found in at least FIGS. 3-11 and in the specification on page 8, lines 8-15. The flexible region recited in each of the four independent claims permits the interlocking teeth structure of the internal member to flex at the region. The flexure can be toward the external member in response to a compressive force or away from the external member when the implant is being expanded. By contrast, *Suddaby I* does teach, disclose, or suggest the feature of a flexible region that permits flexure of an interlocking teeth structure.

Further, the Applicants respectfully disagree with the assertion in the Office Action that the external member of the *Suddaby I*, implant has a greater thickness than the internal wall thickness of the internal wall as recited in claim 11. Figure 1 of *Suddaby I* provides no evidence that the thickness of either wall is different from the other. Further, the specification is silent with regard to the relative thickness of the walls.

For at least these reasons, the Applicants respectfully submit that independent claims 1, 2, 12, and 17, and the dependent claims 3-5, 18-19 and 21-25 are neither anticipated by nor obvious in view of *Suddaby I*. Withdrawal of the rejections is requested.

Claims 2 and 6 stand rejected under 35 U.S. § 102(b) as being anticipated by *Suddaby* (U.S. Pat. No. 6,159,244, "*Suddaby II*"). Applicants respectfully submit that *Suddaby II* does not teach, disclose, or suggest the features of a "slot extending from the first end to the second end of the internal member to form a flexible region within the internal member permitting flexure of the first wall of the internal member with respect to the base of the internal member" as is recited in independent claim 2. Rather *Suddaby II* discloses a pair of shells, each having a plurality of pillars with interlocking teeth, extending from a semi-cylindrical base. *Suddaby II* discloses that to expand the implant the pillars are bent slightly. No indication is given that either of the shells has a slot that forms a flexible region.

Further, applicants respectfully submit that *Suddaby II* does not teach, disclose, or suggest the features of an external member having "a rigid construction configured to prevent flexure of the first wall of the external member." There is no suggestion that any of the members have walls that are designed to prevent flexure. For at least these reasons, the

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Applicants respectfully submit that claim 2 and claim 6, which depends from claim 2 are not anticipated by *Suddaby II*. Withdrawal of the rejection is requested.

Claims 1-2, 6-12, and 16-20 stand rejected under 35 U.S. § 102(e) as being anticipated by Gerbec et al. (U.S. Pat. No. 6,648,917). Claims 8, 10, 16 and 20 are cancelled, rendering their rejections moot. Applicants respectfully submit that *Gerbec* does not teach, disclose, or suggest the following features in the independent claims.

- An “internal member includ[ing] a flexible region extending along a length of the internal member permitting flexure of the interlocking teeth structure” as recited in claim 1.
- A slot “extending from the first end to the second end of the internal member to form a flexible region within the internal member permitting flexure of the first wall of the internal member with respect to the base of the internal member” as recited in claim 2.
- A “pair of slots extending along the length of the internal member, each of the slots defining a flexible region in the internal member positioned adjacent the slot and between the internal base wall and one of the first and second internal walls to permit lateral displacement of the first and second internal walls” as recited in claim 12.
- “[A]rccuate slots positioned adjacent the walls extending along the length of the second member to define a flexible region between each of the walls and the second base portion” as recited in claim 17.

Rather, *Gerbec* discloses an internal member having interlocking teeth structures without slots to define a flexible region and thus cannot permit flexure at the flexible region. For at least these reasons, the Applicants respectfully submit that claims 1, 2, 12 and 17, as well as dependent claims 7, 10, 11, and 18-19, are not anticipated by *Gerbec*. Withdrawal of the rejection is requested.

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CONCLUSION

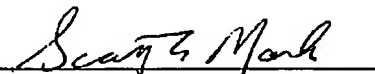
In light of the claim amendments and remarks herein, the Applicants respectfully submit that claims are allowable and request entry of this paper and a timely Notice of Allowance be issued in this case.

The Examiner is invited to contact the undersigned attorney should any questions arise regarding the application.

Respectfully Submitted,

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